

## 2.5 REGULATIONS AND PERMITS

### 2.5.1 Table of Applicable Federal, State, and Local Requirements

Table 2.5.1-1 Pertinent Federal, State and Local Codes, Ordinances, Statutes, Rules, regulations and Permits lists the pertinent federal, state and local permits and related requirements pursuant to Chapter 463-42-685 WAC that apply to construction and operation of the Wild Horse Wind Power Project. The table lists the permits or requirements, identifies the permitting agency, and cites the authorizing statute or regulation. The table also identifies the sections in the Application relating to each permit or requirement.

<b><i>Table 2.5.1-1: Pertinent Federal, State and Local Codes, Ordinances, Statutes, Rules, Regulations and Permits</i></b>		
<b>Permit Or Requirement</b>	<b>Agency/Code, Ordinance, Statute, Rule, Regulation Or Permit</b>	<b>Application Section)</b>
<b>Federal:</b>		
Aviation Regulations And Lighting	Federal Aviation Administration (FAA) 14, CFR Part 77: specifies the criteria for determining whether a “Notice of Proposed Construction or Alteration” is required for potential obstruction hazards; FAA Advisory Circular 70/7460-1 AC70/7460-1K, Obstruction Marking and Lighting, Chapters 4, 8 and 12, describes the FAA standards for marking and lighting structures that may pose a navigation hazard as established using the criteria of Title 14, CFR Part 77; FAA Advisory Circular No. 70/460-2H, relates to the filing of a “Notice of Proposed Construction or Alteration.”	3.15.2 and 3.11.3.3
Threatened Or Endangered Species	U.S. Fish and Wildlife Service Endangered Species Act of 1973 (16 USC, Section 1531, et seq.) and implementing regulations. Designates and provides for protection of threatened and endangered plants and animals and their critical habitat.	3.4.1 and 3.6.3
<b>State:</b>		
Electrical Construction Permit	Washington Department of Labor and Industries Chapter 296-746A WAC Washington Department of Labor and Industries Safety Standards – Installing Electrical Wires and Equipment – Administration Rules.	NR
Noise Control	Washington Department of Ecology Noise Control, Chapter 70.107 RCW; Chapter 173-58 WAC, Sound Level Measurement Procedures; and Chapter 173-60 WAC, Maximum Environmental	3.9.1.

**Table 2.5.1-1: Pertinent Federal, State and Local Codes, Ordinances, Statutes, Rules, Regulations and Permits**

<b>Permit Or Requirement</b>	<b>Agency/Code, Ordinance, Statute, Rule, Regulation Or Permit</b>	<b>Application Section)</b>
	Noise Levels.	
Water Quality Storm Water Discharge: Construction Activities	Washington Department of Ecology Water Pollution Control Act, Chapter 90.48 RCW establishes general stormwater permits for the Washington Department of Ecology National Pollutant Discharge Elimination System Permit Program (NPDES); Chapter 173-201A WAC Washington Department of Ecology Water Quality Standards for Surface Waters of the State of Washington, which regulates water quality of surface waters. Federal statute(s) and regulations implemented by the above state statute(s) and regulations include: Federal Clean Water Act, 42 USC 1251; 15 CFR 923-930.	2.2.4, 3.1.2 and 3.3.2,
Surface Mining	Department of Natural Resources regulates surface mining pursuant to RCW 78.44. RCW 78.44.	2.2.4, 2.6.2 and 3.1.2
Fish And Wildlife	The Washington Department of Fish and Wildlife, pursuant to Chapter 232-12 WAC, designates certain “Priority Habitats”.	3.4 and 3.6
State Environmental Policy Act (SEPA)	Kittitas County would have been lead agency absent EFSEC jurisdiction, Washington Environmental Policy Act, Chapter 43.21C RCW; Chapter 197-11 WAC Washington Department of Ecology SEPA Rules, which establishes uniform requirements for compliance with SEPA.	NR
Archaeology and Historic Preservation	Washington State Office of Archaeology and Historic Preservation Archaeological Sites and Resources, Chapter 27.53 RCW.	3.14
<b>Local:</b>		
Comprehensive Plan	Kittitas County Comprehensive Plan, 2000-2020.	2.2.3; 3.10.1 and 3.10.2
Zoning Ordinance.	Kittitas County Code Title 17	2.2.3; 3.10.1 and 3.10.2
Building Codes	Kittitas County Code 14.04  Implements Chapter 19.27 RCW, State Building Code and Chapter 51-40 WAC State Building Code regulations.	NR

**Table 2.5.1-1: Pertinent Federal, State and Local Codes, Ordinances, Statutes, Rules, Regulations and Permits**

<b>Permit Or Requirement</b>	<b>Agency/Code, Ordinance, Statute, Rule, Regulation Or Permit</b>	<b>Application Section)</b>
Sewage Disposal Installation And Design And Septic Tank Cleaning Regulations	Kittitas County Code Title 13.04	NR
Storm Water Management Plan	Kittitas County Code Title 12.70	2.2.4, 3.1.2 and 3.3.2
Noxious Weed Control	Kittitas County Noxious Weed Control Board Noxious Weeds-Control Boards Chapter 17.10 RCW.	NR
Critical Areas Review / Determination	Kittitas County Code Title 17A (Critical Areas Ordinance)	3.4.1

Legend: NR means not referenced directly in this section but project compliance required.

## **2.5.2 Pertinent Federal Statutes, Regulations, Rules and Permits**

### **2.5.2.1 Federal Aviation Administration (FAA) “Notice of Proposed Construction or Alteration”**

The Federal Aviation Administration (FAA) requires notification and lighting of objects that might pose a hazard to aviation. The applicable regulation is as follows: 49 USC, Section 44718 and Title 14, CFR part 77: specifies the criteria for determining whether a “Notice of Proposed Construction or Alteration” is required for potential obstruction hazards; FAA Advisory Circular 70/7460-1 AC70/7460-1K, Obstruction Marking and Lighting, Chapters 4, 8 and 12 describes the FAA standards for marking and lighting objects such as wind turbine generators that may pose a navigation hazard as established using the criteria of 14 CFR 77; and FAA Advisory Circular No. 70/460-2H, relates to the filing of a “Notice of Proposed Construction or Alteration”.

#### **Statement of Compliance**

The Applicant intends to file a ‘Notice of Construction or Alteration’ with the regional FAA office in Renton, WA to initiate the “7460” review process. Applicant will provide a copy to EFSEC once a final determination is made.

After a determination by the FAA is made, Applicant intends to submit a revised 'Notice of Proposed Construction or Alteration' as necessary to the FAA based on the final, approved Project site layout and proposed turbine size and will comply with all requirements of the FAA. The FAA's aeronautical studies state that, for certain turbines, a 'Notice of Actual Construction or Alteration' (FAA form 7460-2) be submitted within 5 days after the construction reaches its greatest height. The Applicant will submit a 'Notice of Actual Construction or Alteration' (FAA form 7460-2) for all structures for which the FAA has required them in accordance with the required timeline, as necessary.

#### **2.5.2.2 Threatened or Endangered Species**

The Endangered Species Act of 1973 (16 USC 1531, et seq.) and implementing regulations designates and provides for protection of threatened and endangered plants and animals and their critical habitat. It requires a determination of whether a protected species is present in the area affected by a project. Section 7 of the ESA requires that Federal agencies consult with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) for their determination in authorizing a project that may affect listed species or designated critical habitats that may be found in the vicinity of a project. Prior to any consultation process with these agencies, the project proponent and Federal agency develop and submit a biological assessment (BA) for listed species (animals and plants) and critical habitat that may occur within the Project vicinity. The biological assessment is typically based on an analysis of project information (e.g. field studies/surveys) and pertinent natural resource information and provides an effects analysis for the Project on the listed species. The BA concludes with a determination of whether the Project will adversely affect each listed species or adversely modify critical habitat. Upon completion of the biological assessment, formal consultation between the action agency and the USFWS or NMFS is initiated, if necessary.

In cases where a project does not require the approval, funding or conduct of a federal agency, Section 10 of the ESA provides a parallel process whereby non-federal entities may consult with the USFWS or NMFS and acquire a take statement for incidental adverse effects or take of listed species by the Project. In the absence of a federal nexus, the Project proponent and permitting entities (state and county) are not required to obtain concurrence from the USFWS or NMFS when projects will have no effect or not likely adversely affect listed species. The threshold for implementing actions under Section 10 of the ESA is take of a listed species. If a project is likely to result in the take of a listed species, the project proponent should initiate acquisition of a Section 10 permit (USFWS 1996).

#### **Statement of Compliance**

The Applicant has carried out studies and field surveys conducted by Project consultants who have determined that no threatened and endangered plants and animals and their critical habitat will be affected by the Project. The Project will have no effect on federally threatened or endangered species.

### **2.5.3 Pertinent State Statutes, Regulations, Rules and Permits**

#### **2.5.3.1 Department of Natural Resources**

Department of Natural Resources regulates surface mining pursuant to RCW 78.44. RCW 78.44.081 requires the issuance of a Reclamation Permit prior to engaging in surface mining. However RCW 78.44.031 (17)(d)(i) exempts surface mining primarily for on-site construction, on-site road maintenance, or on-site landfill construction.

##### **Statement of Compliance**

The onsite gravel pits will be exempt from Department of Natural Resources surface mining permit requirements. DNR has informed Applicant that the use of onsite gravel is allowed as a temporary construction use, provided that the pits are located on private land and do not sell material for unrelated offsite uses. All material recovered from the onsite pit will be used only for onsite construction purposes and will not be sold. A precedent for such use has additionally been established by the Stateline Wind Farm project near Walla Walla, which used exempt onsite gravel pits for the construction of that wind farm project.

It is anticipated that a reclamation plan will be submitted and approved by EFSEC prior to construction. Applicant will comply with the financial responsibility requirements by posting a financial instrument acceptable to EFSEC for the duration of the construction and reclamation period. These facilities would be subject to the requirements of a National Pollutant Discharge Elimination System (NPDES) storm water construction permit and other pertinent construction and Project operation permits.

#### **2.5.3.2 Electrical Construction Permit**

Washington Department of Labor and Industries which permits, inspects and enforces regulations regarding electrical installations pursuant to Chapter WAC 296-746A WAC Washington Department of Labor and Industries Safety Standards – Installing Electrical Wires and Equipment – Administration Rules.

##### **Statement of Compliance**

The Washington Department of Labor and Industries will administer and enforce all electrical permitting, inspecting, design and enforcement regulations regarding electrical installations either directly or pursuant to a contract with EFSEC. The Project will be designed and constructed in conformance with Chapter WAC 296-746A WAC.

#### **2.5.3.3 Noise Control**

The Washington Department of Ecology has the authority regarding noise standards and control pursuant to Chapter RCW 70.107 RCW Noise Control; Chapter WAC 173-58 WAC, Sound Level Measurement Procedures; and Chapter WAC 173-60 WAC, Maximum Environmental Noise Levels.

#### Statement of Compliance

The Project will be designed, constructed and operated to meet the Washington Department of Ecology's noise regulations and standards.

#### **2.5.3.4 Water Quality Storm Water Discharge: Construction Activities and Operation**

The Project will require a Stormwater General Permit for construction activities because construction of the facility will disturb more than five acres of land. EFSEC has jurisdiction regarding the National Pollution Discharge Elimination System (NPDES) Permit over the Project pursuant to Chapter WAC 463-38 WAC. The Washington Department of Ecology would have had jurisdiction in the absence of EFSEC. The applicable statutes and regulations are as follows: Chapter RCW 90.48 RCW Water Pollution Control Act; Chapter WAC 173-220 WAC Department Of Ecology National Pollutant Discharge Elimination System Permit Program (NPDES), which establishes a state permit program applicable to the discharge of pollutants and other wastes and materials to the surface waters of the state of Washington. WAC 173-226, 'Waste Water General Permit Program', establishes general stormwater permits for the Washington Department of Ecology National Pollutant Discharge Elimination System Permit Program (NPDES); Chapter 173-201A WAC Washington Department of Ecology Water Quality Standards for Surface Waters of the State of Washington, which regulates water quality of surface waters.

Federal statute(s) and regulations implemented by the above state statute(s) and regulations include: 42 USC 1251 Federal Clean Water Act; 15 CFR 923-930.

#### Statement of Compliance

The Applicant will obtain the necessary NPDES Permit(s) from EFSEC pursuant to Chapter WAC 463-39 that will conform to and be in compliance with all the requirements set forth above.

An NPDES Permit will be required for construction activities and may be required for operation. The Applicant will apply for both a General Permit to Discharge Storm Water Associated With Construction and for Coverage Under Sand and Gravel Operations.

#### **2.5.3.5 Department of Fish and Wildlife**

The Washington Department of Fish and Wildlife, pursuant to Chapter 232-12 WAC, designates certain "Priority Habitats".

#### Statement of Compliance

The Applicant will comply with the substantive requirements of Washington Department of Fish and Wildlife regarding appropriate minimization and mitigation of impacts to "Priority Habitat" areas.

#### **2.5.4 State Environmental Policy Act (SEPA)**

A Development Permit would have been required from Kittitas County, which would have made it the lead agency for SEPA absent EFSEC jurisdiction. The applicable statutes, regulations and are as follows: Chapter RCW43.21C RCW Washington State Environmental Policy Act; Chapter WAC 197-11 WAC Washington Department of Ecology SEPA Rules, which establishes uniform requirements for compliance with SEPA and Kittitas County SEPA regulations set out in Kittitas County Code Title.

##### **Statement of Compliance**

A SEPA EIS will be issued by EFSEC that will comply with the statutes and regulations set out above. The substantive requirements set out in the Kittitas County Code Chapter 15.04 are the same and as such will be used by EFSEC in its SEPA process.

##### **2.5.4.1 Archeological Sites**

The Washington State Office of Archaeology and Historic Protection regulates and protects the cultural and historic resources on private and public lands in the State of Washington. The applicable statute is as follows: Archaeological Sites and Resources, Chapter 27.53 RCW.

##### **Statement of Compliance**

The Project will comply with Chapter 27.53 RCW. The Applicant has researched state and federal registries along with all archaeological and historical files and maps located at the Washington State Office of Archaeology and Historic Preservation (OAHP) in Olympia. The Applicant conducted a comprehensive pedestrian field survey of the Project area. This archaeological survey covered the entire areas within the Project where ground-altering activities are proposed. Eight archaeological or historical sites were identified and recorded with in the Project area. All sites will be avoided by a 100 foot buffer. A qualified archeologist will monitor all ground excavation activities during the construction process. The Yakama Nation, the Wanapum, and the Confederated Tribes of the Colville Reservation, have been consulted during the planning process, beginning in February of 2003. They will be notified prior to commencement of construction and will be invited to have representatives present during all groundbreaking activities.

#### **2.5.5 Pertinent Local Ordinances and Permits**

##### **2.5.5.1 Zoning**

The Kittitas County Zoning Regulations are found in Title 17 of the Kittitas County Code. Specifically, Kittitas County Zoning Code 17.61.020 (D) provides that “major alternative energy facilities” are allowable in Agriculture-20, Forest and Range, Commercial Agriculture and Commercial Forest zones pursuant to the provisions of Kittitas County Code 17.61A. The primary conditions are for the protection of the health,

welfare, safety, and quality of life of the general public, and to ensure compatible land use in the vicinity.

#### Statement of Compliance

The Project site is in a zoning designation(s) for which the proposed use may be allowed pursuant to conditions that protect the health, welfare, safety, and quality of life of the general public, and ensure compatible land use in the vicinity. The requirements set out in the Kittitas County Code Chapter 17.61A for approval are substantially of the same nature as those used by EFSEC in its administrative and SEPA process.

#### **2.5.5.2 Comprehensive Plan**

The Kittitas County Comprehensive Plan is not directly applicable to the Project, in that the Plan is implemented through adopted development regulations. However, to the extent that the Plan contains goals and policies, which may be considered to be criteria applied in any development regulations or as substantive SEPA policies, the Applicant summarizes such goals and policies below.

Chapter 2, “Land Use,” contains goals and policies encouraging land uses in agricultural and forestry zones which are compatible with, promote, conserve and protect agricultural and forestry uses, and discouraging land uses which are not compatible with these goals and objectives. (GPO 2.114B, 2.118, 2.130, 2.132, 2.133, 2.135, 2.139 and 2.140).

Chapter 5, “Capital Facilities Plan” contains goals and policies concerning Kittitas County’s development of electric generation and transmission facilities both within urban areas and in rural areas. (GPO 5.110A and 5.110B).

Chapter 6, “Utilities” contains goals and policies relating to the development of utility facilities, including provisions for processing permits in a fair and timely manner, requiring the solicitation of community input prior to County approval of utility facilities, and requiring that decisions regarding utility facilities be made “in a manner consistent with and complementary to regional demands and resources.” Chapter 6 also addresses policies guiding the routing of electric transmission and distribution facilities in rural areas. (GPO 6.7, 6.10, 6.18, 6.21, 6.31, and 6.32.)

Chapter 8, “Rural Lands,” contains goals and policies guiding the development of rural areas of the county. These policies include the assurance that private land owners “should not be expected to provide public benefits without just compensation,” and that “if the citizens desire open space, or habitat, or scenic vistas that would require a sacrifice by the land owner or homeowner, all citizens should be prepared to shoulder their share in the sacrifice.” Chapter 8 encourages the development of “resource based industries and processing.” (GPO 8.7, 8.24, 8.42, and 8.62).

#### Statement of Compliance

The Project will be compatible with the goals and policies of the Kittitas County Comprehensive Plan and will not conflict with surrounding land uses. It will comply



with all Kittitas County Comprehensive Plan standards as may be applicable and enforceable through relevant regulatory criteria.

#### **2.5.5.3 Building Codes**

A building permit will be required from Kittitas County pursuant to Kittitas County Code Title 14.04 for the construction of the permanent buildings. A permit is usually issued upon submittal of detailed plans.

##### Statement of Compliance

The Applicant will comply with the substantive requirements of the Kittitas County building codes.

#### **2.5.5.4 Sewage Disposal Installation and Design Regulations**

Kittitas County has jurisdiction over and regulates the design, installation and maintenance (including pumping) of on-site sewage disposal systems using septic tanks and subsurface disposal fields for systems with designed flows of less than 3,500 gallons/day pursuant to Kittitas County Code Title 13.04.

##### Statement of Compliance

The Project will require an on-site septic system with a design flow of less than 3,500 gallons/day. The Applicant will comply with the substantive Kittitas County septic tank and subsurface disposal field design, installation and maintenance requirements pursuant to Kittitas County Code Title 13.04.

#### **2.5.5.5 Stormwater Management Plan**

Kittitas County requires stormwater management plans for projects pursuant to Kittitas County Code Title 12.70.

##### Statement of Compliance

It is uncertain whether a stormwater management plan would be required for this Project. The substantive requirements set out in the Kittitas County Code Chapter 12.70 are similar to the stormwater management requirements which will be imposed upon the Project by EFSEC.

#### **2.5.5.6 Noxious Weeds**

Kittitas County Noxious Weed Control Board regulates noxious weeds in Kittitas County pursuant to RCW 17.10.

##### Statement of Compliance

The Project will comply with the substantive requirements of Chapter 17.10 RCW as administered by the Kittitas County Noxious Weed Control Board.

#### **2.5.5.7 Critical Areas Review/Determination**

Kittitas County Code, Title 17A requires the submission of a critical areas checklist before commencement of all land use activities and a determination regarding critical areas and mitigation, if necessary.

##### *Statement of Compliance*

Critical areas mitigation requirements, if necessary, are site related, and will be implemented by EFSEC. EFSEC requirements related to critical areas would be similar to the substantive requirements resulting from the implementation of Kittitas County Code, Title 17A.